

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**CAUSE NO. 1:16CR88-LG-JCG-1**

**SHUNDRAKE MCKEEL**

**ORDER DENYING DEFENDANT'S SECOND  
MOTION FOR COMPASSIONATE RELEASE**

**BEFORE THE COURT** is the second [103] Motion for Compassionate Release filed by the defendant, Shundrake McKeel. The Government has filed a response in opposition to the Motion. After reviewing the submissions of the parties, the record in this matter, and the applicable law, the Court finds that the Motion should be denied.

**BACKGROUND**

McKeel pled guilty to one count of possession with intent to distribute oxycodone in violation of 21 U.S.C. § 841(a)(1). On August 25, 2017, the Court sentenced McKeel to 92 months of imprisonment, 36 months of supervised release, restitution in the amount of \$125,505.39 with interest waived, and a special assessment in the amount of \$100.00. He is currently housed at FCI Beaumont Low, and his scheduled release date is July 21, 2023.

On May 18, 2020, McKeel filed his first Motion for Compassionate Release based on his fear of contracting COVID-19 in connection with reported medical issues, including HIV. (Mot., ECF No. 79). On July 14, 2020, the Court denied the Motion for failure to exhaust administrative remedies. (Mem. Op. & Order at 1-4,

ECF No. 96). McKeel filed a Motion for Reconsideration raising new arguments in supporting his claim of exhaustion. (Mot., ECF No. 97). The Court assumed that McKeel had exhausted his administrative remedies but found that McKeel's Motion should be denied on the merits. (Mem. Op. & Order, ECF No. 102).

On September 24, 2021, McKeel filed his second Motion seeking compassionate release. He reiterates that he has HIV, and he states that his most recent lab results show that his CD4 count has dropped from 690 to 420 in six months. He explains that "normal drop ranges are 10 to 50 cells in a 6-month time span[,] making 270 alarming." (Mot., ECF No. 103). He claims that he has sought medical attention from the prison "to no avail." (*Id.*) He further states, "If my cell count continue[s] to plummet, [I] will soon cross the threshold of full blown AIDS which is a count beneath 200 where my immune system won[']t be strong enough to fight off infections and will lead to death. With COVID-19 and Variants continuing to spread, my chances of survival are slim to none in an environment [where] there is no social distancing." (*Id.*)

### DISCUSSION

18 U.S.C. § 3582(c)(1)(A) permits a sentencing court to reduce or modify a term of imprisonment upon a motion by a defendant for compassionate release if it finds that "extraordinary and compelling reasons warrant such a reduction." When considering a compassionate release motion, the court is "bound only by § 3582(c)(1)(A)(i) and, as always, the sentencing factors in § 3553(a)." *United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021).

The CDC has determined that “people with HIV may be more likely to become severely ill from COVID-19.” *What to Know About HIV and COVID-19*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/hiv/basics/covid-19.html>. The CDC recommends that persons with HIV get a COVID-19 vaccine “as soon as possible.” *Id.*

The prison offered McKeel the Pfizer COVID-19 vaccine on February 21, 2021, but he declined. (Gov’t’s Resp., Ex. A, ECF No. 107). McKeel’s “refusal of the COVID-19 vaccine weighs heavily against his argument that his susceptibility to the virus warrants compassionate release.” *See United States v. Frazier*, No. CR 16-148, 2021 WL 4948038, at \*3 (E.D. La. Oct. 25, 2021). His “refusal to take steps to mitigate his chances of becoming ill from COVID-19 supports a finding that his case does not present extraordinary and compelling circumstances warranting his release.” *See id.* For this reason and for the reasons stated in this Court’s prior [102] Memorandum Opinion and Order Denying Defendant’s Motion for Reconsideration for Compassionate Release, which is incorporated herein by reference, McKeel’s Motion for Compassionate Release is denied.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the second [103] Motion for Compassionate Release filed by the defendant, Shundrake McKeel, is **DENIED**.

**SO ORDERED AND ADJUDGED** this the 6<sup>th</sup> day of December, 2021.

*s/ Louis Guirola, Jr.*

LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE